

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. In a November 22, 2011 decision, the Board affirmed OWCP's November 18, 2010 denial of appellant's occupational disease claim on the basis that the medical evidence did not establish that the accepted work activity, namely lifting computer printers, aggravated a preexisting back condition.² Following this decision, counsel filed a formal written request for reconsideration to OWCP on November 21, 2012. He specified that new medical evidence was forthcoming. No such evidence was submitted.

By decision dated November 27, 2012, OWCP denied appellant's request on the grounds that it did not receive new and relevant evidence warranting further merit review.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that the evidence or argument submitted by a claimant must either: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁴ Where the request for reconsideration fails to meet at least one of these standards, OWCP will deny the application for reconsideration without reopening the case for a review on the merits.⁵

ANALYSIS

By merit decision dated November 22, 2011, the Board affirmed denial of appellant's occupational disease claim, finding the medical evidence insufficient to establish that her federal employment aggravated a preexisting back condition. On November 21, 2012 counsel requested reconsideration and indicated that he would present new medical evidence. However, OWCP did not receive such evidence. Moreover, counsel did not assert a relevant new legal contention or show that OWCP erroneously applied or interpreted a specific point of law. Because appellant failed to meet one of the standards enumerated under section 8128(a) of FECA, she was not entitled to further merit review of her claim.

Counsel contends on appeal that the November 27, 2012 decision was contrary to fact and law. As noted, he did not provide evidence or argument satisfying any of the three regulatory criteria for reopening the claim for a merit review.

² Docket No. 11-990 (issued November 22, 2011). The findings contained in the Board's prior decision are incorporated by reference.

³ 5 U.S.C. § 8128(a).

⁴ *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See 20 C.F.R. § 10.606(b)(2).

⁵ *L.D.*, 59 ECAB 648 (2008). See 20 C.F.R. § 10.608(b).

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 8, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board